

AMENDMENTS TO THE DRAWINGS:

A replacement drawing is submitted for Figure 2.

In Figure 2 reference numeral 4 is changed to reference numeral 4a, indicating the inner face as disclosed on page 4, line 30 of the application as filed.

**REMARKS**

The application has been amended to place it in condition for allowance at the time of the next Official Action.

The specification is amended to include section headings.

A replacement drawing is submitted for Figure 2 changing reference numeral 4 to reference numeral 4a, indicating the inner face as disclosed on page 4, line 30 of the application as filed. The above change is the only change and is believed not to introduce new matter.

Claims 1-20 are pending in the application.

Claims 13-15 are amended to recite "another opening", to distinguish over the opening recited in claim 1. The above change is believed sufficient to address the 35 USC §112, second paragraph, rejection noted on page 2 of the Official Action.

Claims 1-3, 6, 7, 11 and 13 were rejected under 35 USC §102(b) as being anticipated by MASHITA 5,681,649. That rejection is respectfully traversed.

MASHITA is directed to a shoe having cushion inserts. For example, Figures 1-4 of MASHITA disclose the shock absorbing cushions in either the in-sole (Fig. 1, in-sole 2), in the mid-sole (Fig. 2 mid-sole 3) or in the out-sole (Fig. 3, out-sole 4). Figure 4 shows that the cushions can be situated in various places on the upper shoe to improve comfort.

However, the shoe of MASHITA is a classical flexible shoe made of, for example, leather, cloth, or other flexible fibers. MASHITA fails to disclose a rigid upper shell as recited.

Moreover, MASHITA fails to disclose that a flexible pad closes an opening in the rigid shell itself. Rather, MASHITA discloses that the various cushions are inserted in the fabrication of the soles or the upper.

The differences between the recited invention and that of MASHITA are further emphasized by the objects of the respective inventions. In MASHITA, the cushions are clearly used to improve shock absorption and comfort. In contrast, an object of the present invention is to use a rigid shell (to ensure safety of a user) while including contact openings with mechanical parts of for example a motorbike, so that the motorbike rider can maintain driving precision.

As the reference does not disclose that which is recited, the anticipation rejection is not viable. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1, 2, 6-10, 13, 16 and 20 were rejected under 35 USC §103(a) as being unpatentable over SIGNORI 4,882,858. That rejection is respectfully traversed.

The position set forth in the Official Action is that SIGNORI shows substantially what is claimed except for the use of

a rigid material. The Official Action suggests that it would have been obvious to use rigid materials in the shell in the boot of SIGNORI as is well known in convention to provide durability and protection.

However, this position is untenable for at least the following reasons.

SIGNORI attempted to improve motorcycle boots that protect sensitive parts of a user, for example the calf, the ankle bones or the upper foot where it comes into contact with a gear selector. The prior art used plastic protective plates added to the outside of the boot. These protective elements were fixed with double stitching on the leather upper.

SIGNORI attempted to improve upon this design by putting flexible protective plates on the inside of the boot. The novelty being in that plastic plates have cylindrical proturances transpiercing the thickness of the leather serving as buffers or bumpers against the interior frame of a motor bike or the gear selector. SIGNORI stated that such a design achieves better protection for sensitive parts of the legs and feet.

Thus, the prior art including SIGNORI either had plastic plates on the inside or the outside of leather boots.

Prior to the present invention, it was not known to use a rigid shell, for example with motorcycle boots, as the user needed some sort of flexibility to operate the gears. However, the present inventors were able to use a rigid shell by

incorporating a flexible portion on only one part of the boot body (at a time). That is, the opening does not extend over more than one portion and thus the boot maintains its rigidity while still having some flexibility through the openings. Such a configuration is not suggested by SIGNORI.

Moreover, modifying SIGNORI in the manner suggested would render it unsatisfactory for its intended purpose. SIGNORI uses a flexible boot having increased flexibility by having a swivel mount 9. Making the boot rigid would not enable the flex required to operate as a motorcycle cross-country racing boot.

In view of this, it is apparent that SIGNORI does not meet the present claims.

Claims 4, 8, 9 and 14-20 were rejected under 35 USC §103(a) as being unpatentable over MASHITA. That rejection is respectfully traversed.

Claims 4, 8, 9 and 14-20 depend from claim 1 and further define the invention and are believed patentable over MASHITA at least for depending from an allowable independent claim.

Claims 3-5 and 12 were rejected under 35 USC §103(a) as being unpatentable over either MASHITA or SIGNORI in view of GILLESPIE, U.S. Publication No. 2002/0112374. That rejection is respectfully traversed.

For the reasons set forth above, neither MASHITA nor SIGNORI disclose what is recited in claim 1. GILLESPIE does not

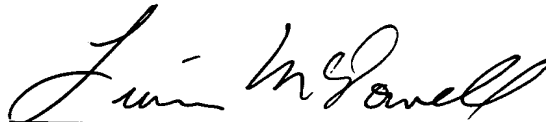
overcome the shortcomings of these references. Since claims 3-5 and 12 depend from claim 1 and further define the invention, these claims are believed patentable at least for depending from an allowable independent claim.

In view of the present amendment and the foregoing remarks, it is believed that the present application has been placed in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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**APPENDIX:**

The Appendix includes the following item(s):

- a Replacement Sheet for Figure 2 of the drawings